



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0408; FRL-9726-3]

Approval of Air Quality Implementation Plans; California; San  
Joaquin Valley Unified Air Pollution Control District;

Prevention of Significant Deterioration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action under section 110 of the Clean Air Act (CAA or Act) to approve a State Implementation Plan (SIP) revision for the San Joaquin Valley Unified Air Pollution Control District (District) portion of the California SIP. This SIP revision incorporates District Rule 2410 - Prevention of Significant Deterioration (PSD) - into the California SIP to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment or unclassifiable areas. EPA is approving this SIP revision because Rule 2410 provides an adequate PSD permitting program as required by section 110 and part C of title I of the CAA.

**DATES:** This rule is effective on [Insert date 30 days from the date of publication in the Federal Register].

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2012-0408 for this action. Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. Some docket materials, however, may be publicly available only at the hard copy location (e.g., voluminous records, maps, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lisa Beckham, EPA Region IX, (415) 972-3811, [beckham.lisa@epa.gov](mailto:beckham.lisa@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we", "us", and "our" refer to EPA.

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- I. Background**

Section 110(a) of the CAA requires states to adopt and submit regulations for the implementation, maintenance and enforcement of the primary and secondary national ambient air quality standards (NAAQS). Specifically, CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) require the State's plan to meet the applicable requirements of section 165 relating to a pre-construction permit program for the prevention of significant deterioration of air quality and visibility protection. The purpose of District Rule 2410 - Prevention of Significant Deterioration, is to implement a pre-construction PSD permit program as required by section 165 of the CAA for certain new and modified major stationary sources located in attainment areas. EPA is currently the PSD permitting authority within the District because the State does not currently have a SIP-approved PSD program within the District. Inclusion of this revision in the SIP will mean that the District has an approved PSD permitting program and will transfer PSD permitting authority from EPA to the District. EPA would then assume the role of overseeing the District's PSD permitting program, as intended by the CAA. For a more detailed discussion of District Rule 2410, please refer to our proposed approval. See 77 FR 32493 (June 1, 2012).

## **II. EPA's Evaluation of the SIP Revision**

### **A. What Action is EPA Finalizing?**

EPA is finalizing a SIP revision for the San Joaquin Valley portion of the California SIP. The SIP revision will be codified in 40 CFR 52.220 and 40 CFR 52.270 by incorporating by reference District Rule 2410, as adopted June 16, 2011 and submitted to EPA by the California Air Resources Board (CARB) on August 23, 2011. In addition, the letter from the District to EPA, dated May 18, 2012, providing certain clarifications concerning District Rule 2410 and 40 CFR 51.166, will be included as additional material in 40 CFR 52.220. The regulatory text addressing this action also makes it clear that EPA is relying, in part, on the clarifications provided in the District's May 18, 2012 letter in taking this final approval action. As such, the District's implementation of the PSD program in a manner consistent with these clarifications is a pre-condition of today's final approval of the District's PSD SIP revision. This SIP revision provides a federally approved and enforceable mechanism for the District to issue pre-construction PSD permits for certain new and modified major stationary sources subject to PSD review within the District.

As discussed in EPA's proposal relating to today's SIP revision approval action, the District has requested approval to exercise its authority to administer the PSD program with respect to those sources located in the District that have existing PSD permits issued by EPA, including authority to

conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (e.g., modifications, amendments, or revisions of any nature), and authority to enforce such permits. Pursuant to the criteria in section 110(a)(2)(E)(i) of the CAA, we have determined that the District has the authority, personnel, and funding to implement the PSD program within the District for existing EPA-issued permits and therefore are transferring authority for such permits to the District concurrent with the effective date of EPA's approval of the District's PSD program into the SIP. A list of the EPA-issued permits that we anticipate will be transferred to the District is provided in the docket for this action. EPA has already provided a copy of each such permit to the District. As described in our proposal, EPA will retain PSD permit implementation authority for those specific sources within the District that have submitted PSD permit applications to EPA and for which EPA has issued a proposed PSD permit decision, but for which final agency action and/or the exhaustion of all administrative and judicial appeals processes (including any associated remand actions) have not yet been concluded or completed upon the effective date of EPA's final SIP approval action for Rule 2410. The District will assume full PSD responsibility for the administration and implementation of such

PSD permits immediately upon notification from EPA that all administrative and judicial appeals processes and any associated remand actions have been completed or concluded for any such permit application.

#### B. Public Comments and EPA Responses

In response to our June 1, 2012 proposed rule, we received two comment letters, one from the Western States Petroleum Association (WSPA) and one from Earthjustice on behalf of a consortium of environmental groups (Medical Advocates for Healthy Air, the Kern-Kaweah Chapter of the Sierra Club, the Center for Race, Poverty, and the Environment, and the Central Valley Air Quality Coalition). Copies of each comment letter have been added to the docket for this action and are accessible at [www.regulations.gov](http://www.regulations.gov). The comment letter from WSPA supports EPA's analysis and proposal to approve District Rule 2410 into the SIP. The comment letter from Earthjustice opposes the SIP revision and raises several specific objections. We have summarized the comments received and provided a response to the comments below.

**Comment 1:** WSPA expresses its support for EPA's expeditious approval of District Rule 2410, and recommends that such approval be completed as soon as possible in order to ensure that permitting is not unduly impacted for facilities subject to PSD review.

**Response 1:** EPA appreciates the commenter's support. We agree that EPA's proceeding expeditiously with its final action on the District's PSD SIP revision, after careful consideration of public comments received on its proposed action, will serve to facilitate timely processing of PSD permit decisions for facilities within the District that are subject to PSD review.

**Comment 2:** Earthjustice states that CAA sections 110(a)(2)(A) and (C) require SIPs to include enforceable measures to regulate the construction and modification of stationary sources. The commenter believes that District Rule 2410 includes loopholes for enforcing District compliance with its permitting requirements because currently, within the District, interested parties are able to seek judicial review of final PSD permitting decisions under section 307 of the Act, whereas under Rule 2410 and California state law there is no right to judicial review of permitting decisions for power plants licensed by the California Energy Commission (CEC). The commenter asserts that under California Public Resources Code (CPRC) section 25531, judicial review of such CEC approvals may only be had at the discretion of the State Supreme Court, and there is no guaranteed right of review. The commenter states that this legal conclusion regarding the limited availability of judicial review for power plant permitting decisions has been repeatedly asserted by the CEC and the District. The commenter

concludes that approval of Rule 2410 would open the door for abuse and noncompliance in PSD permitting decisions, and does not comply with the requirements of section 110(a)(2) of the Act because it does not guarantee judicial enforceability.

**Response 2:** As EPA has stated previously, we interpret the CAA to require an opportunity for judicial review of a decision to grant or deny a PSD permit, whether issued by EPA or by a State under a SIP-approved or delegated PSD program. See 61 FR 1880, 1882 (Jan. 24, 1996) (EPA's proposed disapproval of Virginia's PSD program SIP revision due to State law standing requirements that limited judicial review); 72 FR 72617, 72619 (December 21, 2007) (in approving South Dakota's PSD program, EPA stated: "We interpret the statute and regulations to require at minimum an opportunity for state judicial review of PSD permits"). EPA continues to interpret the relevant provisions of the Act as described in these prior rulemaking actions. We believe that Congress intended for state judicial review of PSD permit decisions to be available for members of the public who can satisfy threshold standing requirements under Article III of the Constitution. See 61 FR 1882, January 24, 1996.

The commenter argues that California's judicial review procedures under CPRC 25531 for PSD permit decisions subject to the CEC certification process do not satisfy the CAA's requirements for judicial review. The commenter states that



these State judicial review procedures are inadequate because such review may only be had at the discretion of the State Supreme Court, and there is no guaranteed right of judicial review.

CPRC section 25531(a) provides: "The decisions of the [CEC] on any application for certification of a site and related facility are subject to judicial review by the Supreme Court of California."<sup>1</sup> California courts have found that California Supreme Court review of a power plant certification decision under CPRC section 25531 is a decision on the merits. Santa Teresa Citizen Action Group v. California Energy Commission, 105 Cal. App. 4<sup>th</sup> 1441, 1447-1448 (2003); see also In re Rose, 22 Cal.4th 430, 444 (2000) (when the sole means of review is a petition in the California Supreme Court, even the court's denial of the petition--with or without an opinion--reflects a judicial determination on the merits). EPA believes that the opportunity provided by CPRC 25531 to seek review of a PSD permit decision for a CEC-certified facility before the California Supreme Court and to obtain that court's judicial determination on the merits satisfies the CAA requirement that an opportunity for judicial review be provided under State law

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<sup>1</sup> The term "facility" within the meaning of CPRC 25531 refers to "any electric transmission line or thermal powerplant, or both electric transmission line and thermal powerplant," and the term "site" refers to "any location on which a facility is constructed or is proposed to be constructed." (CPRC 25110, 25119.)

for PSD permits in SIP-approved PSD programs. We recognize that the judicial review process under CPRC 25531 differs in a number of respects from the administrative and judicial review processes available for PSD permit decisions under 40 CFR part 124 (opportunity to petition for administrative review by the EPA's Environmental Appeals Board (EAB)) and section 307(b) of the CAA (opportunity to seek review before Circuit Court of Appeals) when EPA or a delegated agency under 40 CFR 52.21 is the PSD permit issuer. However, the CAA does not require that the process for judicial review of the grant or denial of a PSD permit issued under a SIP-approved PSD program be identical to that provided when EPA or a delegated agency under 40 CFR 52.21 is the PSD permit issuer.

**Comment 3:** Earthjustice suggests that District Rule 2410 does not meet the public participation requirements of 40 CFR 51.166(q), citing sections 110(a)(2)(A) and (C) of the Act. The commenter states that EPA notes that Rule 2410 does not, on its face, comply with various public participation requirements in 40 CFR 51.166(q). The commenter further states that EPA dismisses these defects by relying on commitments in a letter from the District's Permitting Director to comply with the public participation requirements for issuing PSD permits. The commenter states that these commitments are not enforceable, are insufficient to support approval, and are not proposed to be

codified into the SIP or other approved regulatory language. The commenter also states that it has not been established through any legal reference that the District's Permitting Director is authorized or empowered to bind the District legally to any particular practice, and that should the District fail to adhere to the processes outlined in its letter, stakeholders would have no recourse for ensuring the District's adherence. The commenter also states that the District has relinquished some of its permit processing responsibilities to the CEC, and that the CEC would not be bound by the District's commitments.

**Response 3:** We disagree that Rule 2410 does not comply with the public participation requirements of 40 CFR 51.166(q). Section 5.0 of Rule 2410 requires the District to follow the public participation requirements identified in certain sections of District Rule 2201 prior to issuing a PSD permit. District Rule 2201 is enforceable because it is already approved into the California SIP (see, e.g., 75 FR 26102 (May 11, 2010)). EPA asked the District to provide a letter clarifying, among other things, how Rule 2201 addresses certain specific requirements of 40 CFR 51.166 relating to the District's implementation of a number of PSD procedural requirements. EPA believes this written clarification is appropriate to support our analysis of and conclusions concerning Rule 2410. As noted above in Section II.A, the District provided a clarification letter dated May 18,

2012 to EPA that reflects the District's and EPA's interpretation of the District's public participation processes consistent with 40 CFR 51.166(q). The letter memorializes the proper intended reading of the provisions at issue, and the regulatory text that EPA is finalizing in this action expressly states that EPA is basing its approval of the District's PSD SIP, in part, on the clarifications regarding the District's implementation of the PSD program contained in the District's May 18, 2012 letter. EPA is also including this letter in the additional materials that will be referenced in the CFR as part of this SIP revision approval action. Because the District's implementation of the PSD program in a manner consistent with these clarifications, including those related to the District's public participation processes, is clearly a pre-condition of today's final approval of the District's PSD SIP revision, the clarifications provided in this letter concerning District Rule 2410 are binding and enforceable, and the District must adhere to the positions taken in the letter. In sum, District Rule 2410 meets the public participation requirements of 40 CFR 51.166(q) and is therefore consistent with section 110(a) of the Act in this regard.

Finally, with respect to the argument that the District has relinquished some of its permit processing responsibilities for power plants to the CEC, we are not aware of any particular PSD

public participation requirements related to 40 CFR 51.166(q) that the District will be relying on the CEC to meet on the District's behalf, and the commenter has not specifically identified any such requirement. The District must adhere to the public participation requirements in Rule 2410 prior to issuing a PSD permit.

**Comment 4:** Earthjustice asserts that EPA has not demonstrated, as required by section 110(l) of the Act, that the federal PSD program, as "reformed" through the addition of the flexibility provisions in 2002, will not interfere with the maintenance of the national ambient air quality standards. The commenter disagrees with EPA's analysis that "the requirements of the PSD SIP revision are essentially equivalent to . . . those of the [Federal Implementation Plan] codified in 40 CFR 52.21" in support of EPA's determination that its proposed SIP approval action here would be consistent with section 110(l). The commenter states that the problem with this argument is that there has not been any analysis of whether these PSD regulations, with the various flexibilities that allow sources to be constructed without offsetting emission reductions, without best available control technology to minimize emission increases, and often without any obligation to ensure that the emissions will not cause or contribute to a violation of any national ambient air quality standards, are sufficient to

prevent deterioration of air quality and sliding the District into nonattainment. The commenter notes that the PSD program being approved into the SIP has never been a part of the SIP and therefore has never been analyzed for its consistency with a plan for maintaining compliance with the national standards. The commenter believes it is meaningless to say that the permitting program will not get any worse once it is approved into the SIP because it has never been demonstrated that this permitting program is adequate to prevent the deterioration of air quality in the District.

The commenter states that the California legislature has specifically rejected EPA's finding that the 2002 New Source Review (NSR) Reforms could benefit air quality because permit requirements have impeded or deterred upgrades to sources, citing California Health and Safety Code sections 42501(e) and (f) (finding that the revisions to the federal regulations drastically reduce the circumstances under which modifications at an existing source would be subject to federal new source review and rejecting the argument that this would be beneficial to air quality because this claim is contradicted by California's experience). The commenter believes that the 2002 NSR Reforms to the PSD regulations allow growth to increase with fewer mitigation requirements and fewer safeguards for assessing air quality impacts.

The commenter also notes that although the District is attainment or unclassifiable for particulate matter 10 micrometers ( $\mu\text{m}$ ) in diameter and smaller ( $\text{PM}_{10}$ ), nitrogen dioxide ( $\text{NO}_2$ ), sulfur dioxide ( $\text{SO}_2$ ), carbon monoxide ( $\text{CO}$ ), and lead, EPA has approved a maintenance plan only for  $\text{PM}_{10}$  in the last 10 years since the revisions to the PSD regulations. The commenter asserts that without such a plan there is no basis for assessing how a permitting program that allows significant modifications of major sources to avoid control and air quality analysis requirements will ensure that increased emissions from these sources will not interfere with attainment of the national standards. The commenter argues that blind reliance on the District's parallel nonattainment new source review permitting is no substitute for the missing analysis because the District allows sources to offset emission increases with "pre-baseline" emission reduction credits - meaning current air quality sees only an increase in emissions - and to offset emission increases of one pollutant with decreases of another, which may or may not be relevant to maintenance of the particular national standard.

The commenter asserts that EPA needs to provide its argument and analysis under section 110(1) of the Act for review and comment, as the proposed rule provides no rational basis for believing that the District's PSD program is sufficient to prevent growth in emissions that could interfere with attainment

and maintenance of the national ambient air quality standards in the Valley.

**Response 4:** We disagree with the commenter's contentions that EPA has not conducted the analysis required by section 110(1) of the Act and that EPA's analysis does not provide adequate assurance that approval of the District's PSD program would not interfere with maintenance of the NAAQS. As stated in the Federal Register notice for our proposed approval of the District's PSD SIP revision, EPA included an analysis under section 110(1) in the technical support document (TSD) for the proposed rulemaking for this SIP revision approval action. In the TSD, we stated that our approval of the submittal would comply with CAA section 110(1), because the SIP, as revised to reflect the submitted revision, would provide for reasonable further progress and attainment of the NAAQS, and the requirements of the PSD SIP revision are essentially equivalent to, and at least as stringent as, those of the Federal Implementation Plan (FIP) codified in 40 CFR part 52.21 and used to date by EPA to implement the required PSD program within the District. EPA noted that approval of the District's PSD SIP submittal would merely result in the transfer of authority for the PSD program from the EPA to the District, and therefore would not result in any substantive changes to the PSD program requirements, other CAA requirements, or air quality. We believe



that our 110(l) analysis was adequate and appropriate, for the following reasons.

Section 110(l) of the CAA states that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter." 42 U.S.C. 7410(l). EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if EPA finds that it will at least preserve status quo air quality, particularly where, as here, the pollutants at issue are those for which an area has not been designated nonattainment.

In response to the commenter's concern that approval of the District's PSD SIP submittal including NSR Reform would allow fewer projects to be subject to PSD review,<sup>2</sup> meaning that fewer sources must demonstrate that their emission increases will not cause or contribute to a violation of the NAAQS or apply the best available control technology to those emission increases,

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<sup>2</sup> EPA understands the comment regarding the "various flexibilities" allowing sources to be constructed without BACT and air quality assessment to be directed at NSR Reform's revisions to the method of determining what changes are deemed to be major modifications under EPA and San Joaquin's rules and therefore subject to PSD review. Plainly, once a change is deemed a major modification, 40 CFR 52.21 and the District's rule incorporating 52.21 by reference have provisions for BACT and air quality assessments required by PSD.

we note that our approval of the District's PSD program, which incorporates by reference 40 CFR 52.21, into the SIP will not result in a change to the status quo. As stated in our TSD, the PSD program has been implemented within the District by EPA in accordance with the provisions of 40 CFR 52.21, which incorporated the NSR Reform provisions to which the commenter refers since their inception.

Even if the provisions of 40 CFR 52.21 as revised through NSR Reform were not already in place within the District, EPA is not aware of any basis for concluding that the PSD program under 40 CFR 52.21, including NSR Reform, that has been incorporated by reference by the District would interfere with the maintenance of the NAAQS within the District, nor has the commenter provided specific information demonstrating that such interference would occur. The commenter refers to a general legislative statement by the California legislature that appears to have been adopted in 2003 that disagrees generally with NSR Reform but which is not specific as to what changes in air quality, if any, would occur as a result of EPA's approval of the District's PSD program.

NSR Reform affects only permitting of modifications to existing sources, and more specifically, modifications to existing emissions units. Any growth occurring from new, greenfield sites would be controlled and permitted in the same

manner both pre- and post-reform. Therefore, any concerns about NSR Reform would be related to unregulated growth from existing major sources. In the specific case of the District, modifications that are not subject to PSD review generally have been, and will continue to be, subject to review under the District's minor NSR program, which is approved into the California SIP through District Rule 2201. Rule 2201 contains the District's permit program for all increases in pollutants subject to a NAAQS, whether classified as attainment, nonattainment, or unclassifiable by EPA. The rule includes pre-construction permitting requirements for sources that are not required to be permitted under title I, parts C and D of the Act as new major stationary sources or major modifications at existing major stationary sources in attainment or nonattainment areas, which are commonly referred to as "minor NSR," although this term is not used in Rule 2201. A modification in the District that is not required to obtain a PSD permit (whether due to the application of the NSR Reform provisions or not) would still be subject to the preconstruction permit requirements of the District's minor NSR program in Rule 2201, including any associated testing, monitoring, recordkeeping and reporting requirements. All modifications within the District are required to obtain a permit revision prior to modification of the applicable units. Generally, for any new or modified

emissions unit, the District's NSR program begins applying BACT for emission increases of two pounds per day (0.4 tons per year).<sup>3</sup> See District Rule 2201, Sections 4.1 and 4.2. The District's NSR program also generally requires a demonstration that emissions from certain new or modified stationary sources, including minor sources, will not cause or make worse the violation of an ambient air quality standard. See District Rule 2201, Section 4.14. EPA's approval of the District's PSD program will not change the level of review that is conducted for modifications not subject to PSD review within the District. The District's robust minor NSR permitting program for such sources provides additional assurance that EPA's approval of the District's PSD SIP revision, which incorporates NSR Reform, will not interfere with maintenance of the NAAQS within the District.

We note that at the time EPA adopted NSR Reform, we provided an analysis of the environmental impacts of the "various flexibilities" the commenter discusses. Based on examples and modeling, we concluded that NSR Reform would likely have a neutral to positive effect on air quality relative to the pre-Reform provisions. See generally Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules

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<sup>3</sup>Under the District's rules, CO emissions from a new or modified emissions unit at a stationary source with a post project potential to emit of less than 100 tons per year are exempt from the requirement to apply BACT. In addition, the District's definition of BACT is at least as stringent as the federal definitions for Lowest Achievable Emission Rate (LAER).

(Nov. 21, 2002) (Supplemental Analysis).<sup>4</sup> This analysis applied at the time the NSR Reforms became effective within the District, March 3, 2003. See 67 FR 80186. The commenter has provided no specific data that leads EPA to conclude that this initial analysis was incorrect. Considering the District's minor NSR program, which was not a part of the above-mentioned national analysis, the environmental impacts of continuing to implement the NSR Reform should not be different from the effect modeled in the analysis.

In sum, as EPA concluded in its TSD for the proposed rulemaking, the transfer of the PSD program under 40 CFR 52.21 from EPA to the District is not expected to result in any substantive changes to the PSD program requirements, other CAA requirements, or air quality within the District, and EPA continues to believe that its approval of the District's PSD SIP revision would not interfere with attainment and maintenance of the NAAQS within the District, or with any other applicable requirement of the CAA. EPA bases this conclusion on the fact that the District's PSD program will be no less stringent than the federal PSD program under 40 CFR 52.21 that it is replacing. In addition, EPA has taken into consideration the District's extensive minor source permitting program that will impose

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<sup>4</sup> The Supplemental Analysis is available at <http://epa.gov/nsr/documents/nsr-analysis.pdf>, and has also been added to the docket for this action. It is incorporated into these responses by reference.

control requirements on sources that are not major under the PSD program. EPA finds that the approval of this SIP revision is entirely consistent with the development of a plan for the District to attain and maintain the NAAQS.

Last, it is unclear to EPA what the basis is for the commenter's statement that relying on the existing District nonattainment NSR program is not a substitute for the necessary analysis under CAA section 110(1) in terms of maintenance of the NAAQS, or how the commenter's concerns with the District's nonattainment NSR permitting process relate to EPA's CAA section 110(1) analysis in this case. We assume that the commenter is referring in this statement to the District's major nonattainment NSR program.<sup>5</sup> For the reasons outlined above, EPA believes that its 110(1) analysis for this action is appropriate, and we have not specifically relied on the District's major nonattainment NSR program to support our 110(1) analysis here because our approval action addresses the District's PSD permitting program, which regulates only those pollutants for which the District has been designated attainment or unclassifiable. General concerns about the District's major

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<sup>5</sup> To the extent the commenter may be referring to the District's minor NSR program as it relates to nonattainment pollutants, as noted in more detail above, the District's minor NSR program is quite comprehensive and will impose permit requirements on numerous sources not subject to major nonattainment NSR or PSD review by the District, and, accordingly, will provide additional protection of the NAAQS beyond that provided by the District's PSD program.

nonattainment NSR permitting process are outside the scope of this PSD SIP revision approval action.

### **III. EPA's Final Action**

EPA is approving CARB's August 23, 2011 submittal of District Rule 2410 - Prevention of Significant Deterioration (PSD) - into the California SIP to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment or unclassifiable areas.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9,



2000), because the SIP is not approved to apply in Indian country located in the State and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not

affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

**List of Subjects in 40 CFR part 52**

Air pollution control, Carbon monoxide, Environmental protection, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: August 30, 2012

Jared Blumenfeld,  
Regional Administrator,  
Region IX

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 et seq.

**Subpart F - California**

2. Section 52.220 is amended by adding new paragraph (c) (415) to read as follows:

**§52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(415) New and amended regulations were submitted on August 23, 2011 by the Governor's designee. Final approval of these regulations is based, in part, on the clarifications contained in a May 18, 2012 letter from the San Joaquin Valley Unified Air Pollution Control District regarding specific implementation of parts of the Prevention of Significant Deterioration program.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 2410, "Prevention of Significant Deterioration," adopted on June 16, 2011.

(ii) Additional materials.

(A) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) .

(1) Letter dated May 18, 2012 from David Warner, SJVUAPCD, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding Clarifications of District Rule 2410 and 40 CFR 51.166.

3. Section 52.270 is amended by adding new paragraph (b) (5) to read as follows:

**§52.270 Significant deterioration of air quality.**

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(b) \* \* \*

(5) Rule 2410, "Prevention of Significant Deterioration," adopted on June 16, 2011, for the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) is approved under Part C, Subpart 1, of the Clean Air Act, based, in part, on the clarifications provided in a May 18, 2012 letter from the San Joaquin Valley Unified Air Pollution Control District described in §52.220(c) (415). For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the SJVUAPCD, this approval includes the authority for the SJVUAPCD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating

to such permits, and authority to enforce such permits, except for:

(i) Those specific sources within the SJVUAPCD that have submitted PSD permit applications to EPA and for which EPA has issued a proposed PSD permit decision, but for which final agency action and/or the exhaustion of all administrative and judicial appeals processes (including any associated remand actions) have not yet been concluded or completed by [FEDERAL REGISTER OFFICE: insert date 30 days from date of publication of this document in the Federal Register]. The SJVUAPCD will assume full responsibility for the administration and implementation of such PSD permits immediately upon notification from EPA to the SJVUAPCD that any and all administrative and judicial appeals processes (and any associated remand actions) have been completed or concluded for any such permit decision. Prior to the date of such notification, EPA is retaining authority to apply § 52.21 for such permit decisions, and the provisions of § 52.21, except paragraph (a)(1), are therefore incorporated and made a part of the State plan for California for the SJVUAPCD for such permit decisions during the identified time period.

(ii) [Reserved]

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